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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**
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8 John Montenegro Cruz,
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10 Petitioner,
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12 v.
13 Charles L. Ryan, et al.,
14 Respondents.

No. CV-13-0389-TUC-JGZ

DEATH PENALTY CASE

ORDER

15 Pending before the Court is a motion to intervene under Federal Rule of Procedure
16 24(b) and to expand the record under Rule 7 of the Rules Governing Section 2254 Cases.
17 (Doc. 85.) The motion is filed by Petitioner's former state trial counsel, Brick Storts
18 ("Movant"), on his own behalf. Movant previously filed a motion for leave to file a motion
19 to expand the record in this case (Doc. 79), which was stricken (Doc. 82). Petitioner has
20 filed a brief in opposition. (Doc. 88.)

21 Federal Rule of Civil Procedure 24 applies to motions to intervene in habeas corpus
22 petitions. Movant provides no grounds for disturbing the Court's finding that Movant fails
23 to demonstrate a protectable interest in the case which would give him the right to intervene
24 pursuant to Rule 24(a). *See* (Doc. 82 at 1). Assuming theoretically that Movant may be
25 charged with violations of Arizona's Rules of Professional conduct based on his
26 representation of Petitioner in the underlying state court criminal proceeding, the
27 disposition of post-conviction proceedings concerning the ineffective assistance of counsel
28 is not dispositive on whether counsel violated Arizona's ethical rules. *Cf. In re Wolfram,*

1 174 Ariz. 49, 53 (1993) (holding that the Arizona Supreme Court independently examines
2 the record to determine, under the proper standard, the existence of those facts salient to
3 the disciplinary matter and whether those facts, even if identical to those established in the
4 post-conviction proceedings, warrant discipline).

5 Movant invokes Rule 24(b)(1)(B), which provides that “[o]n timely motion, the
6 court may permit anyone to intervene who . . . has a claim or defense that shares with the
7 main action a common question of law or fact.” The Ninth Circuit has established three
8 necessary prerequisites for allowing permissive intervention pursuant to Rule 24(b): “[A]
9 court may grant permissive intervention where the applicant for intervention shows (1)
10 independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s claim
11 or defense, and the main action, have a question of law or a question of fact in common.”
12 *San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1100 (9th Cir. 1999)
13 (quoting *League of United Latin Amer. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th
14 Cir.1997)). Other relevant factors a court may consider include:

15 the nature and extent of the intervenors’ interest, their standing to raise
16 relevant legal issues, the legal position they seek to advance, and its probable
17 relation to the merits of the case. The court may also consider . . . whether
18 the intervenors’ interests are adequately represented by other parties, whether
19 intervention will prolong or unduly delay the litigation, and whether parties
20 seeking intervention will significantly contribute to full development of the
underlying factual issues in the suit and to the just and equitable adjudication
of the legal questions presented.

21 *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

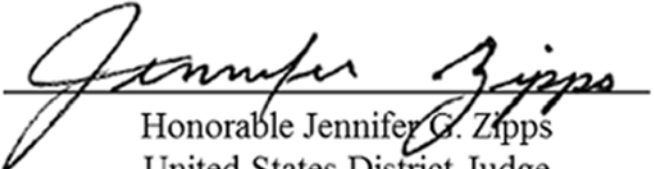
22 Though Movant asserts he “is a party that has an interest” in this case, specifically
23 his professional reputation and integrity, he has not set forth, as Rule 24(b)(1)(B) requires,
24 a specific claim or defense he seeks to litigate. *See also* Rule 24(c) (“The motion [to
25 intervene] must . . . be accompanied by a pleading that sets out the claim or defense for
26 which intervention is sought.”). Further, Movant cannot establish an independent basis for
27 jurisdiction over any unspecified claims. *Cf.* 28 U.S.C. § 2254(a) (“[A] district court shall
28 entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant

1 to the judgment of a State court only on the ground that he is in custody in violation of the
2 Constitution or laws or treaties of the United States.”). Finally, having considered Movant’s
3 arguments in addition to the relevant factors set forth in *Spangler*, the Court finds no other
4 factors favoring intervention in this case. Intervention would undoubtedly prolong or
5 unduly delay this litigation and would not significantly contribute to full development of
6 the underlying factual issues in the suit or to the just and equitable adjudication of the legal
7 questions presented. To the extent the documents for which he seeks to expand the record
8 may be relevant to the issues to be decided by the Court following the scheduled
9 evidentiary hearing, the documents have been disclosed to both parties during Movant’s
10 deposition (*see* Doc. 85 at 3) and the parties may decide to offer such evidence at the
11 hearing, should they elect to do so.

12 Accordingly,

13 IT IS HEREBY ORDERED denying with prejudice the motion to intervene and
14 expand the record. (Doc. 85.)

15 Dated this 2nd day of April, 2019.

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18 Honorable Jennifer G. Zipps
19 United States District Judge
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